



February 16, 2007

SENATE BILL No. 556

DIGEST OF SB 556 (Updated February 14, 2007 7:58 pm - DI 102)

Citations Affected: IC 33-38.

Synopsis: Judges' pensions. Establishes the judges' defined contribution fund (defined contribution fund). Provides that an individual who first begins service as a judge after December 31, 2007, is a participant in the defined contribution fund. Provides that the public employees' retirement fund board of trustees shall administer the defined contribution fund. Requires a participant in the defined contribution fund to make contributions equal to 6% of the salary the participant receives for services as a judge. Allows a participant in the defined contribution fund to make additional contributions not to exceed the maximum allowed under Internal Revenue Code rules. Requires the state to make contributions to the defined contribution fund on behalf of each participant equal to 15% of the salary received by the participant for service as a judge.

Effective: July 1, 2007.

Kruse, Ford, Broden

January 23, 2007, read first time and referred to Committee on Pensions and Labor.
February 15, 2007, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

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SB 556—LS 7820/DI 102+



February 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 556

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 33-38-6-27 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. A reference to the
- 3 judges' retirement system under this chapter:
- 4 (1) is considered a reference to the judges' retirement fund under
- 5 this article; **and**
- 6 (2) **is not considered a reference to the judges' defined**
- 7 **contribution fund under IC 33-38-8.5.**
- 8 SECTION 2. IC 33-38-8.5 IS ADDED TO THE INDIANA CODE
- 9 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 10 JULY 1, 2007]:
- 11 **Chapter 8.5. Judges' Defined Contribution Fund**
- 12 **Sec. 1. (a) This chapter applies only to an individual who first**
- 13 **begins service as a judge after December 31, 2007.**
- 14 **(b) An individual described in subsection (a) shall become a**
- 15 **participant in the defined contribution fund.**

SB 556—LS 7820/DI 102+



1 Sec. 2. As used in this chapter, "defined contribution fund"
2 refers to the judges' defined contribution fund established by
3 section 8 of this chapter.

4 Sec. 3. As used in this chapter, "Internal Revenue Code":

5 (1) means the Internal Revenue Code of 1954, as in effect
6 September 1, 1974, if permitted with respect to governmental
7 plans; or

8 (2) to the extent not inconsistent with subdivision (1), has the
9 meaning set forth in IC 6-3-1-11.

10 Sec. 4. As used in this chapter, "judge" means a person who
11 serves as a regular judge or justice of one (1) or more of the
12 following courts:

13 (1) Supreme court.

14 (2) Court of appeals.

15 (3) Indiana tax court.

16 (4) Circuit court of a judicial circuit.

17 (5) Superior court of a county.

18 (6) Criminal court of a county having a separate criminal
19 court.

20 (7) Probate court of a county having a separate probate court.

21 (8) Juvenile court of a county having a separate juvenile
22 court.

23 (9) Municipal court of a county.

24 (10) County court of a county.

25 Sec. 5. As used in this chapter, "participant" means an
26 individual who participates in the defined contribution fund.

27 Sec. 6. As used in this chapter, "PERF board" refers to the
28 board of trustees of the public employees' retirement fund.

29 Sec. 7. As used in this chapter, "salary" means the total salary
30 paid to a participant by the state and by a county or counties for
31 the participant's service as a judge, determined without regard to
32 any salary reduction agreement established under Section 125 of
33 the Internal Revenue Code.

34 Sec. 8. (a) The judges' defined contribution fund is established.

35 (b) The defined contribution fund shall be administered by the
36 PERF board. The defined contribution fund is a trust, separate and
37 distinct from all other entities, maintained for the purpose of
38 paying benefits to participants and their beneficiaries and paying
39 the costs associated with administering the defined contribution
40 fund.

41 (c) The PERF board shall adopt rules under IC 4-22-2 necessary
42 for the administration of the defined contribution fund.

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1 **Sec. 9. The defined contribution fund must satisfy the**
 2 **qualification requirements in Section 401 of the Internal Revenue**
 3 **Code, as applicable to the defined contribution fund. In order to**
 4 **meet those requirements, the defined contribution fund is subject**
 5 **to the following provisions, notwithstanding any other law:**

6 (1) The PERF board shall distribute the corpus and income of
 7 the defined contribution fund to participants and their
 8 beneficiaries in accordance with this chapter.

9 (2) No part of the corpus or income of the defined
 10 contribution fund may be used for or diverted to a purpose
 11 other than the exclusive benefit of participants and their
 12 beneficiaries.

13 (3) Forfeitures arising from severance of employment, death,
 14 or any other reason may not be applied to increase the
 15 benefits a participant or beneficiary would otherwise receive
 16 under this chapter.

17 (4) If the defined contribution fund is terminated, or if all
 18 contributions to the defined contribution fund are completely
 19 discontinued, the rights of each affected participant to the
 20 benefits accrued at the date of termination or discontinuance,
 21 to the extent then funded, are nonforfeitable.

22 (5) All benefits paid from the defined contribution fund shall
 23 be distributed in accordance with the requirements of Section
 24 401(a)(9) of the Internal Revenue Code and the regulations
 25 under that Section. In order to meet those requirements, the
 26 defined contribution fund is subject to the following
 27 provisions:

28 (A) The life expectancy of a participant, the participant's
 29 spouse, or the participant's beneficiary may not be
 30 recalculated after the initial determination for purposes of
 31 determining benefits.

32 (B) If a participant dies before the distribution of the
 33 participant's benefits has begun, distributions to
 34 beneficiaries must begin not later than December 31 of the
 35 calendar year immediately following the calendar year in
 36 which the participant dies.

37 (6) The PERF board may not:

38 (A) determine eligibility for benefits;

39 (B) compute rates of contribution; or

40 (C) compute benefits of a participant's beneficiaries;

41 in a manner that discriminates in favor of participants who
 42 are considered officers, supervisors, or highly compensated,

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as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefits and contributions specified by Section 415 of the Internal Revenue Code. If a participant's benefits under this chapter would exceed those maximum benefits and contributions, the participant contribution made under this chapter shall be reduced as necessary.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The PERF board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

Sec. 10. (a) The PERF board shall:

(1) determine eligibility for and make payments of benefits under this chapter;

(2) administer the defined contribution fund in accordance with the powers and duties granted in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6; and

(3) provide by rule for the implementation of this chapter.

(b) A determination by the PERF board may be appealed under IC 4-21.5.

(c) The powers and duties of:

(1) the director and the actuary of the PERF board;

(2) the treasurer of state;

(3) the attorney general; and

(4) the auditor of state;

with respect to the defined contribution fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(d) Money in the defined contribution fund may be commingled with the public employees' retirement fund for investment purposes.

(e) The defined contribution fund records of individual participants and participants' information are confidential, except for the name and contributions made by and on behalf of a participant.

Sec. 11. (a) The defined contribution fund consists of the following:

(1) Each participant's contributions to the defined contribution fund.

(2) Contributions made by the state to the defined

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contribution fund.

(3) All gifts, grants, devises, and bequests in money, property, or other form made to the defined contribution fund. Gifts, grants, devises, and bequests shall be divided equally among all participants' accounts.

(4) All earnings on investments or on deposits of the defined contribution fund.

(5) All contributions or payments to the defined contribution fund made in a manner provided by the general assembly. Contributions and payments, other than participants' contributions and contributions made by the state on behalf of participants, shall be divided equally among all participants' accounts.

(b) Each participant shall be credited individually with:

(1) the participant's contributions to the defined contribution fund under section 12 of this chapter, which shall be credited to the participant's account;

(2) the contributions made to the defined contribution fund on behalf of the participant under section 13 of this chapter, which shall be credited to the participant's account; and

(3) the net earnings on the participant's account.

Sec. 12. (a) A participant shall make contributions to the defined contribution fund equal to six percent (6%) of each payment of salary received by the participant for services as a judge. However, the employer may elect to pay the contribution for the participant as a pickup under Section 414(h) of the Internal Revenue Code.

(b) In compliance with rules established by the PERF board, a participant may make contributions to the participant's account in addition to the contributions required under subsection (a). The total amount of contributions that may be made to a participant's account each payroll period under this subsection may not exceed the maximum amount allowable under the applicable Internal Revenue Code rules.

(c) A participant's contributions, other than contributions paid by the employer on behalf of the participant, shall be deducted from the monthly salary of the participant by the auditor of state and by the county auditor and credited to the defined contribution fund. However, a contribution is not required during any period that the participant is not serving as a judge.

Sec. 13. The state shall make contributions annually to the defined contribution fund on behalf of each participant. The amount of the contributions made on behalf of a participant must

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equal fifteen percent (15%) of the salary received by the participant for the participant's service as a judge.

Sec. 14. (a) The PERF board shall establish investment programs within the defined contribution fund, based on the following requirements:

(1) The PERF board shall maintain at least one (1) investment program that is an indexed stock fund and one (1) investment program that is a bond fund.

(2) The programs should represent a variety of investment objectives.

(3) The programs may not permit a participant to withdraw money from the participant's account, except as provided in this chapter.

(4) All administrative costs of each investment program shall be paid from the earnings on that program.

(5) A valuation of each participant's account must be completed as of the last day of each quarter.

(b) A participant shall direct the allocation of the amount credited to the participant among the available investment programs, subject to the following conditions:

(1) A participant may make a selection or change an existing selection under rules established by the PERF board. The PERF board shall allow a participant to make a selection or change any existing selection at least once each quarter.

(2) The PERF board shall implement the participant's selection not later than the next business day following receipt of the participant's selection by the PERF board. This date is the effective date of the participant's selection.

(3) A participant may select any combination of the available investment programs.

(4) A participant's selection remains in effect until a new selection is made.

(5) On the effective date of a participant's selection, the PERF board shall reallocate the participant's existing balance or balances in accordance with the participant's direction, based on the market value of the participant's balance or balances on the effective date.

(6) If a participant does not make an investment selection of an investment program, the participant's account shall be invested in the PERF board's general investment fund.

(7) All contributions to the participant's account shall be allocated not later than the last day of the quarter in which

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the contributions are received and reconciled in accordance with the participant's most recent effective direction.

(c) When a participant transfers the amount credited to the participant from an investment program to another investment program, the amount credited to the participant shall be valued at the market value of the participant's investment, as of the day before the effective date of the participant's selection. When a participant retires, becomes disabled, dies, or withdraws from the defined contribution fund, the amount credited to the participant is the market value of the participant's investment as of five (5) business days preceding the participant's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date.

(d) The PERF board shall determine the value of each investment program in the defined contribution fund, as of the last day of each calendar quarter, as follows:

(1) The market value shall exclude the employer contributions and employee contributions received during the quarter ending on the current allocation date.

(2) The market value as of the immediately preceding quarter end date shall include the employer contributions and employee contributions received during that preceding quarter.

(3) The market value as of the immediately preceding quarter end date shall exclude benefits paid from the defined contribution fund during the quarter ending on the current quarter end date.

Sec. 15. (a) A participant who no longer is serving as a judge is entitled to withdraw the balance in the participant's account in the defined contribution fund. The withdrawal shall be made not later than the required beginning date under the Internal Revenue Code. The amount available for the withdrawal is the amount specified in section 14(c) of this chapter.

(b) The withdrawal amount shall be paid in a lump sum, a partial lump sum, a monthly annuity as purchased by the PERF board, or a series of monthly installment payments over sixty (60), one hundred twenty (120), or one hundred eighty (180) months, as elected by the participant. The forms of annuity and installments shall be established by the PERF board by rule, in consultation with the system's actuary. The PERF board shall give participants information on these forms of payments and the effects of various dates of withdrawal.

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1 **Sec. 16. (a) This section applies to a participant who dies:**

2 (1) while serving as a judge; or

3 (2) after terminating service as a judge and before
4 withdrawing the balance in the participant's account from the
5 defined contribution fund.

6 **(b) The balance in the participant's account shall be paid to a**
7 **beneficiary or the beneficiaries designated on a form prescribed by**
8 **the PERF board. The amount paid shall be the amount specified in**
9 **section 14(c) of this chapter. If there is no properly designated**
10 **beneficiary, or if no beneficiary survives the participant, the**
11 **participant's accounts shall be paid to:**

12 (1) the surviving spouse of the participant;

13 (2) if there is no surviving spouse, a surviving child or the
14 surviving children of the participant; or

15 (3) if there is no surviving spouse and no surviving child, the
16 estate of the participant.

17 **(c) Amounts payable under this section shall be paid in a lump**
18 **sum, a partial lump sum, a monthly annuity as purchased by the**
19 **PERF board, or a series of monthly installment payments over**
20 **sixty (60) months, as elected by the recipient. The forms of annuity**
21 **and installments available shall be established by the PERF board**
22 **by rule, in consultation with the system's actuary.**

23 **Sec. 17. The amount required to make the state's employer**
24 **contributions required by this chapter is annually appropriated**
25 **from the state general fund.**

26 **Sec. 18. A participant or beneficiary may not assign any**
27 **payment under this chapter except for premiums on a life,**
28 **hospitalization, surgical, or medical group insurance plan**
29 **maintained in part by a state agency.**

30 **Sec. 19. The PERF board shall adopt rules establishing**
31 **procedures for making loans to a participant from the participant's**
32 **employee contribution account and employer contribution account**
33 **within the defined contribution fund. Rules adopted under this**
34 **section must comply with the requirements of Section 72(p) of the**
35 **Internal Revenue Code and must apply to each participant in the**
36 **defined contribution fund, regardless of whether the participant is**
37 **serving as a judge at the time of the loan. A loan made in**
38 **accordance with rules adopted under this section is not considered**
39 **receipt of retirement benefits for purposes of IC 5-10-8-1.**

40 **Sec. 20. Notwithstanding any other provision of this chapter, to**
41 **the extent required by Section 401(a)(31) of the Internal Revenue**
42 **Code and any amendments and regulations related to Section**

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1 401(a)(31) of the Internal Revenue Code, the defined contribution
 2 fund shall allow participants to elect a direct rollover of eligible
 3 distributions to another eligible retirement plan.

4 Sec. 21. (a) To the extent permitted by the Internal Revenue
 5 Code and applicable regulations, the defined contribution fund
 6 may accept, on behalf of any active participant, a rollover
 7 distribution from any of the following:

8 (1) A qualified plan described in Section 401(a) or Section
 9 403(a) of the Internal Revenue Code.

10 (2) An annuity contract or account described in Section 403(b)
 11 of the Internal Revenue Code.

12 (3) An eligible plan that is maintained by a state, a political
 13 subdivision of a state, or an agency or instrumentality of a
 14 state or political subdivision of a state under Section 457(b) of
 15 the Internal Revenue Code.

16 (4) An individual retirement account or annuity described in
 17 Section 408(a) or Section 408(b) of the Internal Revenue
 18 Code.

19 (b) Any amounts rolled over under subsection (a) must be
 20 accounted for in a rollover account that is separate from the
 21 participant's account in the defined contribution fund.

22 (c) A participant may direct the investment of the participant's
 23 rollover account into any investment option that the PERF board
 24 makes available to the participant's rollover account.

25 (d) A participant may withdraw the participant's rollover
 26 account from the defined contribution fund in a lump sum at any
 27 time before retirement. At retirement, the participant may
 28 withdraw the participant's rollover account in accordance with the
 29 retirement options that are available for the participant's account.

30 Sec. 22. Notwithstanding any provision of this chapter, the
 31 defined contribution fund shall be administered in a manner
 32 consistent with the following:

33 (1) The Family and Medical Leave Act of 1993 (29 U.S.C. 2601
 34 et seq.).

35 (2) The Uniformed Services Employment and Reemployment
 36 Rights Act (38 U.S.C. 4301 et seq.).

37 (3) The Americans with Disabilities Act (42 U.S.C. 12101 et
 38 seq.).

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SENATE MOTION

Madam President: I move that Senator Ford be added as second author and Senator Broden be added as third author of Senate Bill 556.

KRUSE

COMMITTEE REPORT

Madam President: The Senate Committee on Committee on Pensions and Labor, to which was referred Senate Bill No. 556, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 1, delete lines 1 through 15.
- Page 2, delete lines 1 through 8.
- Page 2, delete lines 16 through 42.
- Delete pages 3 through 17.
- Page 18, delete lines 1 through 11.
- Page 18, line 17, delete "or full-time magistrate".
- Page 19, line 8, delete "judge or full-time magistrate," and insert "judge,".
- Page 21, line 42, delete "judge or" and insert "judge.".
- Page 22, line 1, delete "full-time magistrate.".
- Page 22, line 16, delete "either".
- Page 22, line 16, delete "judge or full-time" and insert "judge.".
- Page 22, delete line 17.
- Page 22, line 22, delete "judge or full-time" and insert "judge.".
- Page 22, delete line 23.
- Page 24, line 7, delete "either".
- Page 24, line 8, delete "or a full-time magistrate".
- Page 24, line 24, delete "judge or full-time magistrate;" and insert "judge;".
- Page 24, line 25, delete "or full-time magistrate".
- Page 25, line 17, delete "or full-time magistrate".
- Page 26, delete lines 19 through 40.

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Renumber all SECTIONS consecutively.

and when so amended that said bill be reassigned to the Senate Appropriations.

(Reference is to SB 556 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 9, Nays 1.

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